IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL REVISION APPLICATION NO. 250 OF 2006

SHAIKH MOHAMMED HASSAN ISMAIL .. PETITIONER

Versus

SHAIKH NAHIDA MOHD. HASSAN & ANR. RESPONDENTS

Ms. S. M. Dandekar for petitioner

Ms. Apurva Parsekar for R-1

Mr. A.R. Pati, AGP

CORAM:-SMT. RANJANA DESAI &

SMT. V.K. TAHILRAMANI, JJ.

DATED:- 11/9/2006

P.C.

. The petitioner-husband has challenged in this revision application judgment and order dated 12/4/06 passed by the Family Court No. 5, Mumbai. By the impugned order, the petitioner has been directed to pay maintenance allowance at Rs.4,000/- per month to respondent 1 wife and Rs.1000/- to the minor daughter Farin.

2. We have heard the learned counsel appearing for the parties.

3. Admittedly the impugned order is ex parte. It appears that though the petitioner was present throughout, on the crucial date he was absent. Since the impugned judgment and order is ex parte, without going into the merits of the rival contentions, we feel that in the interest of justice it should be set aside and the matter should be remanded to the Family Court, Mumbai. During the pendency of the proceedings the petitioner should be asked to pay maintenance to the respondents as directed by the Family Court. We also feel that the Family Court should be directed to dispose of the matter afresh in a time frame laid down by us.

4. We are informed that the petitioner is in arrears of maintenance. The learned counsel for the petitioner states that within two weeks, the petitioner will deposit an amount of Rs.20,000/- towards part payment of the arrears in the Family Court, Mumbai.

5. In the circumstances, we pass the following

order:

a) The impugned judgment and order dated 12/4/06 passed by the Family Court No. 5, Mumbai in Petition No. E-153/2004 is set aside. The matter is remanded to the Family Court, Mumbai.

b) The Family Court shall hear the petition afresh after giving opportunity to both sides to lead evidence, if necessary. The Family Court shall complete the entire exercise within a period of three months from the date of receipt of this order by it; The parties shall appear before the Family Court on 25/9/06.

c) The petitioner shall deposit in the Family Court at Mumbai Rs.20,000/- as part payment of the arrears of maintenance within two weeks. On such deposit being made, the 1st respondent will be at liberty to withdraw the same without security.

d) The petitioner shall continue to pay maintenance to the respondents during the pendency of the proceedings as directed by the Family Court under the impugned order.

e) We make it clear that we have not expressed any opinion on the merits of the case and the Family Court shall deal with the proceedings afresh and in accordance with law.

f) Writ to go to the Family Court, Mumbai, immediately.

g) Revision application is disposed of.

(SMT. RANJANA DESAI,J.)

(SMT. V.K. TAHILRAMANI, J.)